

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TYR SPORT, INC., a California corporation } **Case No.: SACV 08-00529 JVS (MLGx)**

Plaintiff,

vs.

WARNACO SWIMWEAR, INC. dba SPEEDO USA, a Delaware corporation; UNITED STATES SWIMMING, INC., an Ohio corporation; MARK SCHUBERT, an individual; ERIK VENDT, an individual; and DOES 1 through 10, inclusive,

Defendants.

ORDER ON STIPULATION FOR PROTECTIVE ORDER

STIPULATION AND PROTECTIVE ORDER

THE PARTIES HEREBY STIPULATE AND AGREE, through undersigned counsel, that this Protective Order be entered in this action. The purpose of this Protective Order is to safeguard the confidentiality of certain proprietary and confidential documents and information that any person or entity may be called upon to produce during the course of the action:

1 1. In connection with discovery proceedings in the above-captioned action
2 (the “action”), any party may, by written notice, or by a statement on the record at a
3 deposition, designate any other document, testimony, answer to interrogatories, or
4 other information or discovery material that the party in good faith believes to be
5 confidential, commercial or financial information not previously made available to
6 the public as either “Confidential” or “Highly Confidential—Attorneys’ Eyes Only”
7 under the terms of this Protective Order. The provisions of this Protective Order
8 also shall apply to any non-party who provides testimony, documents or information
9 in such discovery proceedings and who agrees to be bound by the terms of this
10 Protective Order. References to a “party” or “parties” herein shall also include such
11 non-parties.

12 2. Any documents, material or information to be designated
13 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” may be so
14 designated by stamping the documents, material or information with the legend
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
16 ONLY” prior to their production. Stamping such a legend on the cover of any multi-
17 page document shall not mean that all the pages are “Confidential” or “Highly
18 Confidential—Attorneys’ Eyes Only.” Rather, the producing party shall so
19 designate all pages of such document that are “Confidential” or “Highly
20 Confidential—Attorneys’ Eyes Only.”

21 3. In the event counsel for the party receiving documents, material or
22 information designated as “Confidential” objects to such designation of any or all of
23 such items, said counsel shall advise the party producing the items (the “producing
24 party”) of such objections and the reasons for them. All of the items shall be treated
25 as “Confidential” pending a resolution of the parties’ dispute, and it shall be the
26 obligation of the party receiving the items designated as “Confidential” to seek a
27 prompt hearing before this Court with respect to the propriety of the designation. It
28 shall be the burden of the producing party to justify to the Court the basis for the

1 designation. In the event that the receiving party seeks such a hearing, the producing
2 party will cooperate in obtaining a prompt hearing with respect thereto.

3 4. In the event counsel for the party receiving documents, material or
4 information designated as “Highly Confidential—Attorneys’ Eyes Only” objects to
5 such designation of any or all of such items, said counsel shall advise the producing
6 party of such objections and the reasons for them. In the event the producing party
7 intends to maintain the designation, it shall be required to file, within 15 days of
8 receipt of the opposing party’s objections, an appropriate motion with the Court
9 seeking an order approving the designation of the documents as “Highly
10 Confidential—Attorneys’ Eyes Only,” and it shall be the burden of the producing
11 party to justify to the Court the basis for maintaining such designation. All of the
12 items shall be treated as “Highly Confidential—Attorneys’ Eyes Only” pending a
13 resolution of the parties’ dispute. In the event that the producing party seeks such a
14 hearing, the receiving party will cooperate in obtaining a prompt hearing with
15 respect thereto.

16 5. If any party wishes to use or inquire at any deposition concerning
17 documents, material or information designated as “Confidential” or “Highly
18 Confidential—Attorneys’ Eyes Only,” the portion of the deposition transcript that
19 relates to such documents, material or information shall be designated and treated as
20 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” and subject to the
21 confidentiality provisions hereof. Further, any party may designate any additional
22 portion of deposition testimony in this action “Confidential” or “Highly
23 Confidential—Attorneys’ Eyes Only” no later than ten (10) days after receipt of the
24 deposition transcript, subject to the provisions of paragraphs 2 and 3, above.

25 6. Documents or material (including portions of deposition transcripts)
26 designated as “Highly Confidential—Attorneys’ Eyes Only,” or information derived
27 solely therefrom, may only be disclosed or made available by the party receiving
28 such information to “Qualified Persons,” who, in the case of documents, material or

1 information designated as "Highly Confidential—Attorneys' Eyes Only" are defined
2 to consist solely of:

- 3 (a) The Court;
- 4 (b) Counsel (including "in-house" counsel) to the named parties to this
5 action and the paralegal, clerical, and secretarial staff employed by
6 such counsel;
- 7 (c) Court reporters;
- 8 (d) Any deponent in a deposition taken in connection with this action;
- 9 (e) Experts and/or advisors consulted by the named parties or their counsel
10 in connection with this action, whether or not retained to testify at trial;
11 provided, that prior to any such disclosure, counsel for the party
12 making the disclosure shall deliver a copy of this Protective Order to
13 the expert and/or advisor, shall explain its terms to the expert and/or
14 advisor, and shall secure the signature of the expert and/or advisor on a
15 letter in the form attached hereto as Exhibit A. It shall be the further
16 obligation of counsel, upon learning of any breach or threatened breach
17 of this Protective Order by any expert and/or advisor, promptly to
18 notify opposing counsel of such breach or threatened breach; and
- 19 (f) Any other person as to whom the producing party agrees in writing
prior to disclosure.

20 7. Documents or material (including portions of deposition transcripts)
21 designated as "Confidential" and information derived solely therefrom may only be
22 disclosed or made available by the party receiving such information to "Qualified
23 Persons," who are defined to consist solely of:

- 24 (a) The Court;
- 25 (b) The named parties to this action, which in the case of corporate parties
26 shall include: the corporation's officers, directors, and managers, along
27 with employees of such corporate parties to whom disclosure is
28 necessary to aid counsel in the prosecution and defense of this action;

- (c) Counsel (including “in-house” counsel) to the named parties to this action, and the paralegal, clerical, and secretarial staff employed by such counsel;
 - (d) Court reporters;
 - (e) deponent in a deposition taken in connection with this action;
 - (f) Experts and/or advisors consulted by the named parties or their counsel in connection with the action, whether or not retained to testify at trial; provided, that prior to any such disclosure, counsel for the party making the disclosure shall deliver a copy of this Protective Order to the expert and/or advisor, shall explain its terms to the expert and/or advisor, and shall secure the signature of the expert and/or advisor on a letter in the form attached hereto as Exhibit A. It shall be the further obligation of counsel, upon learning of any breach or threatened breach of this Protective Order by any expert and/or advisor, promptly to notify opposing counsel of such breach or threatened breach;
 - (g) Government regulators;
 - (h) Government officials to whom disclosure is required by law;
 - (i) Insurance carriers; and
 - (j) Any other person as to whom the producing party agrees in writing prior to disclosure.

8. Documents and materials designated as "Confidential" or "Highly

Confidential—Attorneys’ Eyes Only” and information derived solely therefrom shall be used by the parties to the action and their counsel only for the purposes of preparing for and conducting the action. Documents and materials designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” and information derived solely therefrom shall not be used by the parties or their counsel except as expressly permitted herein. Moreover, any document containing summary or recitation of any part of the content of a Confidential Document also shall be

1 deemed to be a Confidential Document and subject to all of the protections and
2 restrictions in this Stipulation.

3 9. No copies shall be made of any “Confidential” or “Highly Confidential
4 – Attorneys’ Eyes Only” document except as necessary for preparation and
5 prosecution of the action. Any and all such documents shall be kept in secure,
6 segregated facilities and access to those facilities shall be permitted only to Qualified
7 Persons. Counsel for each party shall take such reasonable steps to advise those
8 persons employed or retained in clerical, stenographic or ministerial functions of the
9 restrictions upon dissemination of confidential documents provided by this
10 Stipulation.

11 10. Nothing herein shall impose any restrictions on the use or disclosure by
12 a party or witness of documents or information obtained lawfully by such party or
13 witness independently of the discovery proceedings in this action, whether or not
14 such documents or information are also obtained through discovery proceedings in
15 this action.

16 11. Nothing contained herein shall constitute a waiver of or otherwise
17 restrict a party’s right to object to the discovery of or use of any documents or
18 information in the action.

19 12. If documents and material (including portions of deposition transcripts)
20 designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only,” or
21 information derived solely therefrom, are to be included in any papers to be filed in
22 Court, such papers shall be labeled “Confidential—Subject to Court Order” and filed
23 under seal and kept under seal until further Order of the Court.

24 13. Each non-lawyer given access to documents, material or information
25 designated “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” pursuant
26 to the terms hereof shall be advised that the documents, material or information are
27 being disclosed pursuant to and subject to the terms of this Stipulation and Protective
28 Order and may not be disclosed other than pursuant to the terms hereof.

1 14. Complying with the terms of this Protective Order shall not: (a) operate
2 as an admission by any party that any particular documents, material or information
3 contain or reflect currently valuable proprietary or commercial information; or
4 (b) prejudice in any way the right of a party at any time: (i) to seek a determination
5 by the Court of whether any particular documents, item of material, or piece of
6 information should be subject to the terms of this Protective Order; or (ii) to seek
7 relief on appropriate notice from any provision(s) of this Protective Order, either
8 generally or as to any particular documents, item of material, or piece of
9 information.

10 15. Upon termination of any of the above-captioned action, including all
11 appeals, the parties shall return to counsel for the producing party all documents or
12 material designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes
13 Only” and all copies thereof, or the parties may agree upon appropriate methods of
14 destruction. Notwithstanding the foregoing, to the extent that documents reflecting
15 attorney work product contain material or information designated as “Confidential”
16 or “Highly Confidential—Attorneys’ Eyes Only,” counsel in possession of such
17 documents may, in lieu of returning them to the producing party, certify in writing to
the producing party that such documents have been destroyed.

18 16. Nothing in this Protective Order shall be construed to prohibit a party
19 from producing documents, material or information designated as “Confidential” or
20 “Highly Confidential—Attorneys’ Eyes Only” in its possession pursuant to a
21 subpoena or other legal process; provided, that the party in possession of such
22 documents, material or information, if subpoenaed, shall give notice of such
23 subpoena (unless prohibited by law from doing so) to the originally producing party
24 as soon as possible and, in any event, within five (5) days after receiving such
25 subpoena. Unless such notice is prohibited by law, the subpoenaed party shall not
26 produce any of the producing party’s “Confidential” or “Highly Confidential—
27 Attorneys’ Eyes Only” documents, material or information for a period of at least
five (5) days after providing the required notice to the producing party. If, within

1 five (5) days of receiving such notice, the producing party opposes production of its
2 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” documents,
3 material or information pursuant to the subpoena, the subpoenaed party shall
4 reasonably cooperate with the producing party in seeking to quash such subpoena
5 and shall not thereafter produce such documents, material or information pursuant to
6 the subpoena except pursuant to a court order requiring compliance with the
7 subpoena. A party shall not be required to give notice of any subpoena where such
8 provision of notice is prohibited by law.

9 17. All discovery material in this action, including documents, material, and
10 information designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes
11 Only,” may be used by the parties to the action, subject to the rights of any party to
12 raise any other objections to the use of such discovery material.

13 18. The provisions of this Stipulation and Protective Order shall survive the
14 termination of the action, and shall remain enforceable by the parties.

15 19. The parties will jointly seek the approval of the Court with respect to
16 this Stipulation and Protective Order. Notwithstanding the pendency of approval by
17 the Court, this Stipulation and Protective Order shall become effective immediately
18 upon execution by the parties. If approval by the Court is ultimately denied, no
19 party shall treat any documents, material or information designated “Confidential” or
20 “Highly Confidential—Attorneys’ Eyes Only” that was produced prior to that time
other than as provided herein.

1 20. The Court is not bound by the terms of this Protective Order, and this
2 Protective Order may be modified by subsequent Order of the Court.

3 AGREED:

5 DATED: November __, 2008

6 HEWITT & O'NEIL LLP
7 LAWRENCE J. HILTON
8 WILLIAM E. HALLE
9 JAMES R. BRUNER

10 By: _____

11 Lawrence J. Hilton

12 Attorneys for Plaintiff and Counterdefendant
13 TYR SPORT, INC.

15 DATED: November __, 2008

16 KATTEN MUCHIN ROSENMAN LLP
17 KAREN ARTZ ASH
18 JAMES J. CALDER
19 STUART M. RICHTER
20 ZIA F. MODABBER
21 GREGORY S. KORMAN

22 By: _____

23 Stuart M. Richter

24 Attorneys for Defendant SPEEDO USA, a
25 division of WARNACO SWIMWEAR, INC.

1 DATED: November __, 2008
2
3
4

HOLME ROBERTS & OWEN LLP
ADAM BREZINE
RICHARD R. YOUNG

5 By: _____
6 Adam Brezine

7 Attorneys for Defendants UNITED STATES
8 SWIMMING, INC. and MARK SCHUBERT
9
10

11 DATED: November __, 2008
12
13

CAMERON, PEARLSON & FOSTER
RICHARD J. FOSTER

14 By: _____
15 Richard J. Foster

16 Attorneys for Defendant and Counterclaimant
17 ERIK VENDT
18
19

IT IS SO ORDERED:



20
21
22 Marc L. Goldman
23 United States Magistrate Judge
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26
27
28

Dated: November 14, 2008

Exhibit A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Plaintiff,

VS.

WARNACO SWIMWEAR, INC. dba SPEEDO USA, a Delaware corporation; UNITED STATES SWIMMING, INC., an Ohio corporation; MARK SCHUBERT, an individual; ERIK VENDT, an individual; and DOES 1 through 10, inclusive, }
FOR ACCESS TO
CONFIDENTIAL DOCUMENTS
AND INFORMATION

Defendants.

**Case No.: SACV 08-00529 JVS
(MLGx)**

**LIMITED SPECIAL
APPEARANCE AND
AGREEMENT
FOR ACCESS TO
CONFIDENTIAL DOCUMENTS
AND INFORMATION**

I hereby acknowledge and affirm that I have read the terms and conditions of the Protective Order entered by the Court in the above-captioned matters on this

____ day of _____, 2007. I understand the terms of the Court's Order and under oath consent to be bound by the terms of the Court's Order as a condition to being provided access to confidential documents and information furnished by

_____. By executing this Agreement, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms of the Court's Protective Order.

I hereby declare under penalty of perjury under the laws of the United States of America that the above statements are true and correct.

Dated: _____

By: _____

Name: _____

Title:

Affiliation:

Address: